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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91222404
Party	Defendant American Silver, LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<b>UNDER ARMOUR, INC.,</b>  Opposer,  v.  <b>AMERICAN SILVER, LLC,</b>  Applicant,	Opposition No. 91222404  Mark: ARMOR GEL Int'l Class: 005 Serial No.: 86/232,097 Filed: March 26, 2014 Published: February 17, 2014
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**AMERICAN SILVER, LLC'S ANSWER TO NOTICE OF OPPOSITION**

Applicant American Silver, LLC ("American Silver" or "Applicant") hereby answers the numbered allegations set forth in the Notice of Opposition filed by Opposer Under Armour, Inc., ("Under Armour" or "Opposer"), as follows:

**Under Armour and its Alleged Products and Trademarks**

1. American Silver lacks knowledge or information sufficient to form a belief regarding the factual allegations set forth in the first and last sentence of Paragraph 1 of the Notice of Opposition and therefore denies the same. American Silver denies the remaining allegations of Paragraph 1 of the Notice of Opposition.

2. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Notice of Opposition and therefore denies the same.

3. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3 of the Notice of Opposition and therefore denies the same.

4. American Silver asserts that the U.S. Patent and Trademark Office's records of trademark registrations and ownership as reflected in the TESS and TSDR databases speak for themselves. American Silver denies that such records reflect significant growth and expansion by Opposer over the years. Furthermore, American Silver lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged in Paragraph 4 of the Notice of Opposition, and therefore denies the same.

5. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 of the Notice of Opposition and therefore denies the same.

6. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6 of the Notice of Opposition and therefore denies the same.

7. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 7 of the Notice of Opposition and therefore denies the same.

8. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 8 of the Notice of Opposition and therefore denies the same.

9. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 9 of the Notice of Opposition and therefore denies the same.

10. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 10 of the Notice of Opposition and therefore denies the same.

11. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 11 of the Notice of Opposition and therefore denies the same.

12. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12 of the Notice of Opposition and therefore denies the same.

13. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13 of the Notice of Opposition and therefore denies the same.

14. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14 of the Notice of Opposition and therefore denies the same.

15. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 15 of the Notice of Opposition and therefore denies the same.

16. American Silver lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 16 of the Notice of Opposition and therefore denies the same.

17. American Silver denies the allegations set forth in Paragraph 17 of the Notice of Opposition.

18. American Silver admits that the Trademark Trial and Appeal Board of the United States Patent and Trademark Office issued an opinion in *Under Armour, Inc. v. Bode*, Opp. 91178653 (TTAB May 21, 2009) but denies that the TTAB's opinion in *Under Armour, Inc. v. Bode* has any precedential or other factual or legal effect in the present matter.

19. American Silver asserts that the U.S. Patent and Trademark Office's records of trademark registrations and ownership as reflected in the TESS and TSDR databases speak for themselves. Furthermore, American Silver lacks knowledge or information sufficient to form a belief as to the validity, ownership, or assignment of trademark registrations or as to the truth of other allegations alleged in Paragraph 19 and Exhibit A of the Notice of Opposition, and therefore denies the same.

20. American Silver asserts that the U.S. Patent and Trademark Office's records of trademark registration applications and ownership as reflected in the TESS and TSDR databases speak for themselves. American Silver lacks knowledge or information sufficient to form a belief as to the truth of all other allegations alleged in Paragraph 20 of the Notice of Opposition, and therefore denies the same.

21. American Silver asserts that the U.S. Patent and Trademark Office's records of trademark registrations and ownership as reflected in the TESS and TSDR databases speak for themselves. Furthermore, American Silver lacks knowledge or information sufficient to form a

belief as to the validity, ownership, or assignment of trademark registrations or as to the truth of other allegations alleged in Paragraph 21 and Exhibit B of the Notice of Opposition, and therefore denies the same.

**Applicant and Its Mark**

22. American Silver admits the allegations set forth in Paragraph 22 of the Notice of Opposition.

23. American Silver admits the allegations set forth in Paragraph 23 of the Notice of Opposition.

24. American Silver affirmatively asserts and alleges that it intends to use the ARMOR GEL mark described in U.S. Trademark Registration Application No. 86/232,097 with the goods identified in Application No. 86/232,097 (*i.e.*, “Hydrogel for medical purposes”) as set forth in the Application and further alleges that the Application speaks for itself. All allegations contained in Paragraph 24 of the Notice of Opposition inconsistent with U.S. Trademark Registration Application No. 86/232,097 are hereby denied.

**Count One**  
**Likelihood of Confusion, 15 U.S.C. § 1052(d)**

25. American Silver incorporates herein by reference each of the admissions, denials, and/or allegations contained in Paragraphs 1 through 24 of its Answer to the Notice of Opposition as if fully set forth herein.

26. American Silver lacks knowledge or information sufficient to form a belief as to the truth of whether all of Opposer’s alleged marks were registered or applied for registration before the filing date of the U.S. Trademark Registration Application No. 86/232,097, and therefore denies the same. American Silver also affirmatively alleges and asserts that Opposer lacks seniority with respect to any trademark or trademark rights for any marks confusingly

similar to Applicant's ARMOR GEL mark as described in U.S. Trademark Registration Application No. 86/232,097 or for any related goods or services.

27. American Silver denies the allegations set forth in Paragraph 27 of the Notice of Opposition.

**Count Two**  
**Dilution, 15 U.S.C. § 1125(c)**

28. American Silver incorporates herein by reference each of the admissions, denials, and/or allegations contained in Paragraphs 1 through 27 of its Answer to the Notice of Opposition as if fully set forth herein.

29. American Silver denies the allegations set forth in Paragraph 29 of the Notice of Opposition.

30. American Silver denies the allegations set forth in Paragraph 30 of the Notice of Opposition.

31. American Silver denies the allegations set forth in Paragraph 31 of the Notice of Opposition.

32. All allegations set forth in Opposer, Under Armour's Notice of Opposition not expressly admitted herein, are hereby denied.

**AFFIRMATIVE DEFENSES**

Without admitting the allegations set forth in Opposer, Under Armour's Notice of Opposition, Applicant, American Silver alleges and asserts the following defenses, affirmative or otherwise, without assuming any burden of proof that it would not otherwise have. In addition to the affirmative defenses described below and subject to its responses above, Applicant

specifically reserves all rights to allege additional defenses, affirmative or otherwise, that become known through the course of discovery:

1. Opposer's Notice of Opposition fails to state a claim upon which relief may be granted.

2. The term ARMOUR is highly diluted as a trademark formative, and hence exceptionally weak, and Opposer's purported rights extend no further, if at all, than to the specific marks for which Opposer alleges it owns trademark registrations, none of which are the same as or confusingly similar to Applicant's mark in terms of connotation, appearance, and/or pronunciation, and none of which are for related goods or services.

3. The public interest will be harmed if Opposer's Notice of Opposition is granted.

4. Opposer's alleged trademarks are not famous in any relevant field of goods or services. To the extent any of Opposer's marks have become famous in any relevant field of goods or services, which is hereby expressly denied, on information and belief, such alleged fame arose, if at all, after Applicant's first use of its ARMOR GEL mark.

5. Opposer's alleged trademarks and Applicant's ARMOR GEL mark are dissimilar in appearance, sound, connotation, and/or overall commercial impression and will not create a likelihood of confusion or dilution when applied to the relevant goods.

6. Opposer does not have or own any trademark registrations or common law trademark rights covering any goods or services related to the goods or services identified in U.S. Trademark Registration Application No. 86/232,097, which is the subject of the Notice of Opposition.

7. Applicant's ARMOR GEL mark as set forth in U.S. Trademark Registration Application No. 86/232,097, which is the subject of the Notice of Opposition, does not and will



not impair or harm any of Opposer's alleged trademark rights in any meaningful way and would not result in any dilution of Opposer's alleged trademarks.

8. Opposer does not have or own any trademark registrations or common law trademark rights for any mark in International Class 005 or for any goods or services that are related to the goods set forth in U.S. Trademark Registration Application No. 86/232,097, which is the subject of the Notice of Opposition.

9. Opposer's claims are barred under the doctrines of estoppel and acquiescence and/or because of Opposer's failure to police its marks in any relevant fields. On information and belief, Opposer routinely fails to object to marks which contain the terms "Armour" and/or "Armor" and numerous other third parties have used such terms as part of their trademarks with the Opposer's knowledge and acquiescence thereto.

10. Applicant reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure, the Lanham Act, and any other defenses at law or in equity that may now exist or in the future be available based on discovery and further factual investigation in this case.

WHEREFORE, Applicant, American Silver respectfully requests that:

1. The Notice of Opposition be dismissed with prejudice; and
2. That a Notice of Allowance be issued in U.S. Trademark Registration Application No. 86/232,097.

Respectfully submitted this 10<sup>th</sup> day of August, 2015.

/Perry S. Clegg/  
Perry S. Clegg

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*Attorneys for Applicant,  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing AMERICAN SILVER, LLC'S ANSWER TO NOTICE OF OPPOSITION and this CERTIFICATE OF SERVICE were served on Opposer by mailing a true copy thereof to its attorney of record, by First Class Mail, postage prepaid this 10<sup>th</sup> day of August, 2015, in an envelope addressed as follows:

Douglas A. Rettew  
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP  
901 New York Avenue, NW  
Washington, DC 2001-4413

/s/ Perry S. Clegg  
Perry S. Clegg